

DATE: December 13, 2007

In re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-04722  
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**DECISION OF ADMINISTRATIVE JUDGE  
LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esq., Department Counsel

**FOR APPLICANT**

Gregory Moohn, Union Representative

**SYNOPSIS**

During 2001-2006, Applicant underwent five surgical procedures and incurred 30 delinquent medical debts totaling about \$23,959. She also incurred delinquent debts for cell phones given to family and a friend and for rented videos not returned by family members. All debts except the medical debts have been paid in full. Applicant is enrolled in a credit counseling program and has a five-year payment plan for her medical debts. Security concerns based on financial considerations are mitigated. Clearance is granted.

## **STATEMENT OF THE CASE**

Applicant applied for a security clearance on October 16, 2006. On July 12, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations)

Applicant answered the SOR in writing on August 20, 2007, admitted the factual allegations, offered explanations, and requested a hearing. The case was assigned to me on October 2, 2007. On October 16, DOHA issued a notice of hearing setting the case for November 7, 2007. The notice was sent to an attorney, based on information from Applicant. The attorney decided not to take the case. Applicant's personal representative entered his appearance on November 3, 2007. The case was heard on November 7, 2007, as scheduled. I kept the record open until November 25 to enable Applicant to submit additional documentary evidence. She submitted her additional evidence on the afternoon of November 7, and it has been admitted as Applicant's Exhibit (AX) CCC. Department Counsel's comments on the post-hearing submission are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on November 20, 2007.

## **FINDINGS OF FACT**

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 33-year-old diplomatic protective security officer, employed by a federal contractor since November 2006. She has never held a security clearance. She is married and has two children, ages 12 and 13. Her supervisor describes her as knowledgeable, honest, dedicated, poised, and able to handle any situation with confidence (AX M). Two of Applicant's neighbors testified about her integrity and her commitment to her family and her work (Tr. 100, 102, 106).

In February 2000, Applicant received a diploma with honors from a professional career development institute (AX X; AX Y). In April 2001, she completed training at a technical institute and received a certificate as a medical assistant (AX S; AX U). In April 2006, she completed her college education and received a bachelor's degree in criminal justice administration (AX R; AX V). In November 2006, she completed training as a uniformed protection officer (AX T) and in April 2007, she completed basic firearms training (AX W). She is now in a graduate program, scheduled to graduate in September 2008 with a master's degree in administration of justice and security (AX J at 2). She has student loans of about \$43,000, alleged in SOR ¶ 1.h, that are in a deferred status (Government Exhibit (GX) 4 at 4-5; AX J; AX AA at 18-20).

Applicant worked at various jobs before attending college and graduate school. She lived in the southwest United States before moving to the east coast in June 2006, looking for better

employment opportunities. A friend from her former residence described her as strong-willed, goal-directed, hard-working, and a person of high integrity. (AX N). A former supervisor described her as extremely reliable, a team player, and possessing excellent skills in dealing with people (AX O; Tr. 82). A medical doctor for whom she worked described her as responsible, dependable, compassionate, and well liked (AX P). Another former supervisor described her as exceptionally willing, capable, pleasant, and requiring little or no supervision (AX Q; Tr. 84).

In May 2002, Applicant opened two cell phone accounts for her husband while they were geographically separated, and expected him to pay the bills when they were due. He failed to make the payments, and these accounts were placed for collection (SOR ¶ 1.d). In December 2004, Applicant opened a cell phone account for a friend, trusting her to make the payments. When the friend failed to make the payments, the accounts were placed for collection (SOR ¶ 1.a). In August 2007, Applicant contacted the collection agencies and paid all three accounts in full (Tr. 54; AX B; AX F).

Between 2001 and 2006, Applicant had five surgical procedures but had no medical insurance. She incurred the 30 medical bills alleged in SOR ¶ 1.b, totaling about \$23,959. For three of the surgeries, she was on unpaid leave for about six weeks (Tr. 64-65). She offered to pay \$20 per month on the medical bills, but her offer was rejected (Tr. 47). She was unaware that credit counseling services existed until her sister, who also had financial problems, enrolled in a credit counseling program and told Applicant about it (Tr. 66). In October 2007, Applicant contacted a credit counseling service and consolidated most of her medical debts in a five-year plan calling for payments of \$515 per month, beginning in November 2007 (AX C). Three smaller medical debts (\$256, \$50, and \$25) were paid in full in August 2007 (AX D).

The debts alleged in SOR ¶ 1.c were late charges for videos incurred in June and September 2001. The debt in SOR ¶ 1.g was for unreturned videos, incurred on an unknown date and referred for collection in April 2004. Applicant did not realize her family members had not returned the videos, and the accounts were referred for collection. She paid the debt in SOR ¶ 1.c in July 2007 (AX E) and the debt in SOR ¶ 1.g in October 2007 (AX I; AX CCC).

The three collection accounts alleged in SOR ¶ 1.e were for two medical bills for her daughter that were not covered by insurance and a gas bill incurred at her previous residence. She believed her children's medical bills would be covered by Medicaid, but they were not. Applicant was unaware of these bills until she saw her credit report (Tr. 56). All three collection accounts were paid in full in August 2007 (AX G at 1, 4, 5, 6). The debt alleged in SOR ¶ 1.f also was a medical bill for one of her children. Applicant contacted the creditor in July 2007 and paid the bill in full in September 2007 (AX H).

Applicant was aware of the delinquent medical debts in SOR ¶ 1.b for several years. She applied for a home loan in 2006 and was turned down (Tr. 92-93). She was interviewed about her debts by a security investigator in January 2007 (GX 3 at 8), began contacting her creditors in May 2007, and was able to make some payment arrangements (Tr. 48). She paid off several small debts between July and October 2007. Her financial breakthrough occurred when her sister told her about the availability of credit counseling services, and she was able to arrange a repayment plan for her medical debts.

Applicant's husband works for a construction company and was recently promoted to superintendent. They have experienced marital problems and lived apart for a while, but they are now reconciled (Tr. 60-61). She and her husband are now temporarily living apart because he is working on a job out-of-state (Tr. 95). Her monthly take-home pay is about \$3,400, and her husband's is \$3,600 (Tr. 94; AX BB). She does not have health insurance (Tr. 87). She owes about \$16,000 on a car loan (GX 4 at 3). Her rent and car payments are current (Tr. 34; GX 4 at 3). In her personal financial statement submitted to the credit counseling agency, she reported a net remainder of \$659 per month, of which \$515 is used for monthly debt payments to the agency (AX C). She knows that the payment plans negotiated by the credit counseling agency will be cancelled if she fails to make the monthly \$515 payment to them (Tr. 68-69).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Amount	Status	Evidence
1.a	Cell phone	\$275	Paid in full, Aug 07	AX B
1.b	30 Medical debts placed for collection	\$23,959	Three debts paid in full in Aug 07; paying \$515 per month on remaining debts	AX C; AX D
1.c	Overdue videos	\$215	Paid in full, Jul 07	AX E
1.d	Two cell phones	\$805	Paid in full, Aug 07	AX G
1.e	Medical and gas	\$309	Paid in full, Aug 07	AX G
1.f	Medical bill	\$161.86	Paid in full, Sep 07	AX H
1.g	Overdue videos	\$250	Paid in full, Oct 07	AX I; AX CCC
1.h	Student loans	\$43,000	Deferred	GX 4 at 4-5; AX J; AX AA at 18-20

## POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

## CONCLUSIONS

The concern under Guideline F is as follows: “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” AG ¶18.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(b) is a two-pronged condition that is raised where there is “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

Department Counsel conceded that there was no evidence the student loans alleged in SOR ¶ 1.h were delinquent (Tr. 115-16). The concession is supported by the evidence of record. Accordingly, I conclude Applicant has refuted the allegation in SOR ¶ 1.h, and it is resolved in her favor.

AG ¶¶ 19(a), (c), and (e) are raised by the evidence of the delinquent debts alleged in SOR ¶¶ 1.a-1.f. Applicant's credit history reflects her inability to satisfy her debts until recently. Between 2001 and 2006, she was incurring medical bills faster than she could repay them.

AG ¶ 19(b) is not raised, because there is no evidence of frivolous or irresponsible spending. There is evidence that she was financially naive, negligent, and too trusting when she provided cell phones to a friend and her husband, assumed legal responsibility for them, and failed to monitor the recipients' payments; however, this conduct is not the kind of "frivolous or irresponsible spending" contemplated by AG ¶ 19(b). Her negligence is relevant, however, to the whole person analysis required by the adjudicative guidelines.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c) and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 20(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was "so long ago," or "so infrequent," or "occurred under such circumstances that it is unlikely to recur." If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct "does not cast doubt on the individual's current reliability, trustworthiness, or good judgment."

The first prong ("so long ago") is not established. Although Applicant's financial difficulties began several years ago, the debts were unresolved until recently. Her medical debts are not fully resolved, because she has just begun a five-year repayment plan. The second prong ("so infrequent") also is not established, because Applicant's financial history reflects numerous delinquent debts.

The third prong (under circumstances unlikely to occur) is established for the medical debts. They were the result of multiple serious medical conditions requiring surgery. Although she still has no medical insurance, her medical problems are not likely to occur.

The debts for cell phone accounts and unreturned videos are recent, multiple, and could raise questions about her good judgment at the time. Applicant did not know her children's medical bills were not covered by Medicaid, but she failed to monitor payment of those bills. However, Applicant appears to have learned from her unwise generosity and lack of attention to her financial liabilities. Her meticulous response to DOHA interrogatories, her answer to the SOR, and her recent financial

management reflect attention to detail that previously was lacking. I conclude AG ¶ 20(a) is established for the medical debts in SOR ¶ 1.b but not for the remaining debts in SOR ¶¶ 1.a and 1.c-1.f.

Security concerns under this guideline also can be mitigated by showing that “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” AG ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established.

The medical bills alleged in SOR ¶ 1.b were beyond Applicant’s control. She offered small monthly payments, but they were rejected. She moved to a new location seeking better employment opportunities, found her current job, and continued her education in an effort to improve her employment opportunities. I conclude AG ¶ 20(b) is established for the medical debts in SOR ¶ 1.b.

Security concerns under this guideline also can be mitigated by showing that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.” AG ¶ 20(c). Applicant is in a credit counseling program. She has paid off many smaller debts and has a five-year plan to pay off her medical bills. She has not yet established a track record for her five-year plan, but she has been steadily paying off her other delinquent debts for several months. I conclude this mitigating condition is established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant contacted her creditors in May 2007, paid off several debts, and has negotiated a five-year payment plan for her medical debts. Her security clearance application and the ensuing investigation undoubtedly provided motivation for her to right her financial ship. However, until she learned about the availability of credit counseling from her sister, she was unaware of the tools available to resolve her situation. Based on all the evidence, including her sincere and credible testimony at the hearing, I am satisfied that she initiated a good-faith effort to pay her debts out of a strong sense of obligation as well as her desire to obtain a clearance and a better job. I conclude AG ¶ 20(d) is established.

In addition to considering the specific disqualifying and mitigating conditions under Guideline F, I have also considered: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. AG ¶¶ 2(a)(1)-(9).

Applicant is a mature adult. She has worked for years to improve her job skills and become qualified for increased responsibility and higher pay. The delinquent debts arising from the cell phone accounts and overdue videos were the product of inattention and naivete. However, they arose while Applicant's life was complicated by illness, marital strife, the turbulence of a family move, the busy schedule of full-time employment and college classes, and sole responsibility for parenting two adolescent girls. After Applicant's home loan application was rejected and she found herself under scrutiny in connection with her security clearance application, she realized aggressive action was needed. She availed herself of credit counseling when she learned about it from her sister. She presented herself at the hearing as very determined, scrupulously honest, and sincere. While she has not yet established a track record for her five-year plan to pay off her medical bills, she has been paying off other bills for several months. I am satisfied she has a clear plan to regain financial stability, the financial ability to carry out her plan, and the determination to see it through.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on financial considerations. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her a security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.h:

For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge